

Evans
K139124



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: California State University, Fullerton
File: B-243040.2
Date: May 9, 1991

Jeffrey J. Young, Ph.D., for the protester.
Catherine M. Evans, and David Ashen, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Protest of agency's rejection of late proposal, sent by United States Postal Service Express Mail 1 day prior to the closing date for receipt of proposals, is dismissed; failure of Postal Service to deliver proposal to designated office by deadline did not constitute "mishandling by the government" that would excuse lateness.
2. Protest of agency's refusal to extend date for receipt of proposals is dismissed for failure to set forth a detailed statement of the legal and factual grounds of the protest as required by General Accounting Office Bid Protest Regulations.
3. Protest of alleged defects in solicitation is dismissed as untimely where not filed prior to time set for receipt of proposals.

DECISION

California State University, Fullerton (CSUF) protests the rejection of its late proposal under request for proposals (RFP) No. DTFH61-91-R-00033, issued by the Department of Transportation, alleging that government mishandling was the primary cause of the proposal's lateness. CSUF also complains of various alleged defects in the RFP, and asserts that the agency improperly failed to provide it with a copy of the RFP in a timely fashion or extend the closing date for receipt of proposals.

We dismiss the protest.

The RFP, issued on January 3, 1991, established February 12 as the closing date for receipt of proposals. CSUF alleges that it sent its proposal on February 11 via United States Postal Service Express Mail, with the Postal Service

guaranteeing next day delivery. CSUF later received a telephone message from the agency stating that its proposal was not logged in until 9 a.m. on February 13, and therefore was rejected. CSUF protested to our Office, alleging that the rejection was improper because mishandling by the Postal Service was the cause of the proposal's lateness.^{1/}

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal. Ferren-Manuele & Assocs., Inc., B-235191, Apr. 28, 1989, 89-1 CPD ¶ 411. A late proposal may be considered only if it was sent by registered or certified mail at least 5 days before the date specified for receipt of offers or if the proposal's lateness is due solely to mishandling by the government after receipt at the government installation. See Federal Acquisition Regulation § 52.215-10. Express Mail is not considered registered or certified mail for purposes of this regulation. Ferren-Manuele & Assocs., Inc., B-235191, supra. Moreover, any delay of an Express Mail delivery by the Postal Service is not considered to be mishandling by the government because the word "government" in the cited provision refers to the procuring agency, not the Postal Service, and the mishandling must occur after the proposal is received at the government installation. Id.

Since CSUF did not mail its proposal until 1 day prior to the closing date for receipt of proposals, and used other than registered or certified mail, CSUF assumed the risk that its proposal would not be considered if a delay in delivery occurred. See id. As CSUF has not alleged any mishandling on the part of the procuring agency, we have no basis to find that rejection of CSUF's proposal was improper.

CSUF also protests the agency's failure to allow it sufficient time to prepare its proposal. In this regard, CSUF alleges that the agency did not furnish it with a copy of the RFP in a timely manner, and then denied its request for an extension of the closing date.

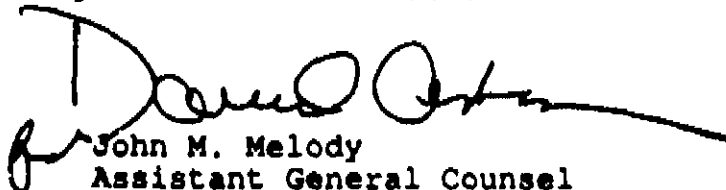
^{1/} CSUF first protested this matter to our Office on February 21, 1991. We dismissed the protest on the ground that CSUF had also protested to the General Services Board of Contract Appeals (GSCA). GSCA subsequently dismissed the protest for lack of jurisdiction, and so notified CSUF on March 11. CSUF refiled its protest in our Office on March 20. Since GSCA did not consider the merits of the protest, and CSUF timely filed the protest within 10 working days of notification of GSCA's dismissal, we consider it now. See Mannesmann Tally Corp., B-238790.4, Oct. 16, 1990, 90-2 CPD ¶ 293.

Consistent with the requirements under our Bid Protest Regulations that a protest include a detailed statement of the legal and factual grounds of protest and that the grounds stated be legally sufficient, 4 C.F.R. §§ 21.1(c)(4) and 21.1(e) (1991), where a protester contends that the agency allowed insufficient time for preparation of proposals, we require a showing that the time allowed was inconsistent with statutory requirements or otherwise unreasonable or insufficient, or that it precluded full and open competition. Cajar Defense Support Co., B-240477, Aug. 3, 1990, 90-2 CPD ¶ 100.

Contracting agencies are required by statute to allow a minimum 30-day response period for procurements. See 15 U.S.C. § 637(e)(3)(B) (1988). Here, the agency allowed 38 days between the date on which the RFP was issued and the closing date. The fact that CSUF did not receive a copy of the RFP when it was first issued does not itself establish that the agency acted improperly. Moreover, CSUF itself asserts that the agency mailed it a copy the RFP only a few days after CSUF requested it; thus, there was no apparent attempt by the agency to preclude CSUF from competing. As CSUF has not offered any specific reason why the amount of time it had was insufficient to prepare a proposal, CSUF in fact prepared its proposal before the due date, and the agency received other proposals on time, we have no basis to conclude that the agency's refusal to extend the closing date was improper. See Cajar Defense Support Co., B-240477, supra.

Finally, CSUF alleges numerous deficiencies in the RFP. Our Regulations provide that protests of apparent solicitation defects must be filed before the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1). As CSUF did not raise these matters until after proposals were due, its protest in this regard is untimely.

The protest is dismissed.


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Assistant General Counsel